

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9382 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHAIKH FAZAL SHAIKH NAZIR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner
MS PUNANI AGP for Respondent No. 1
RULE SERVED for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 9th September, 1998, made by the

Commissioner of Police, Surat City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It is alleged that the petitioner is a habitual offender and two offences punishable under Chapters-XVI & XVII of the IPC have been registered against the petitioner. Further, the petitioner's activities are believed to be detrimental to the maintenance of public order.

It appears that the last of the aforesaid two offences was registered against the petitioner on 26th April, 1998. The petitioner was arrested and released on bail on 1st May, 1998. Long thereafter, in the month of August 1998 i.e. on 26th August, 1998, and 27th August, 1998, the statements of the witnesses were recorded. The said statements were verified on 9th September, 1998, and the impugned order of detention was also made on the same day. It is apparent that the aforesaid statements have been recorded long after the petitioner was released on bail. The interregnum period i.e. since 26th April, 1998 has not been explained by the Detaining Authority. In absence of any explanation coming forth from the Detaining Authority, it must be held that the aforesaid statements were recorded in the month of August, 1998, with a view to covering the period lapsed after the petitioner was arrested and even released on bail. Such belated action can not be sustained.

Petition is, therefore, allowed. The impugned order dated 9th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI